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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGG A. FOSTER,

Defendant and Appellant.

D042284

(Super. Ct. No. SCD172626)

APPEAL from a judgment of the Superior Court of San Diego County, Michael D. Wellington, Judge. Affirmed.

After the court denied a motion for substitution of counsel (*People v. Marsden* (1970) 2 Cal.3d 118), Gregg A. Foster entered guilty pleas to selling and possessing cocaine base for sale (Health & Saf. Code, §§ 11352, subd. (a), 11351.5). He admitted a prior conviction of selling a controlled substance (Health & Saf. Code, § 11370.2, subd. (a)) making him ineligible for probation (Pen. Code, § 1203.07, subd. (a)(11)), serving three prior prison terms (Pen. Code, § 667.5, subd. (b)), and a prior strike (Pen. Code,

§ 667, subds. (b)-(i)). At the initial sentencing hearing, the court struck the strike prior and the Health and Safety Code section 11370.2 and Penal Code section 1203.07, subdivision (a)(11) findings and sentenced Foster to nine years in prison: the four-year middle term for selling cocaine base enhanced three years for the prior drug sales conviction and two one-year terms for prior prison terms. The court stayed execution of the sentence and placed Foster on five years' probation including a condition he complete the Delancey Street Foundation rehabilitation program, and stayed sentence for possessing cocaine base for sale under Penal Code section 654. Three days later, the court determined it lacked power to strike the Penal Code section 1203.07 finding, gave Foster the opportunity to withdraw his guilty pleas, which he decided not to do, and recalled the sentence and sentenced him to prison for six years: double the three-year lower term for selling cocaine base with a strike prior. It stayed sentence for possessing cocaine base for sale and struck the prior prison term enhancements.

## DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738. Because Foster entered a guilty plea, he cannot challenge the facts underlying the conviction. (Pen. Code, § 1237.5; *People v. Martin* (1973) 9 Cal.3d 687, 693.) We need not recite the facts.

We granted Foster permission to file a brief on his own behalf. He has not responded. A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d

436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Foster on this appeal.

DISPOSITION

The judgment is affirmed.

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McINTYRE, J.

WE CONCUR:

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McCONNELL, P. J.

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McDONALD, J.